

Isolation & Quarantine

Legislative Amendments

May 26, 2004

Steven D. Gravely, J.D., M.H.A.

Troutman Sanders LLP

Richmond, Virginia

(804) 697-1308 (p)

(804) 698-5158 (f)

steve.gravely@troutmansanders.com



Key Definitions

- ❖ Communicable disease of public health significance
- ❖ “Shall include, but may not be limited to, infections caused by human immunodeficiency viruses, blood-borne pathogens, and tubercle bacillus. The State Health Commissioner may determine that diseases caused by other pathogens constitute communicable diseases of public health significance. Further, “a communicable disease of public health significance” shall become a “communicable disease of public health threat” upon the finding of the State Health Commissioner of exceptional circumstances pursuant to Article 3.02 (§ 32.1-48.05 et seq.) of this chapter.”

Key Definitions

- ❖ Communicable disease of public health threat
- ❖ “Means an illness of public health significance, as determined by the State Health Commissioner in accordance with regulations of the Board of Health, caused by a specific or suspected infectious agent that may be reasonably expected or is known to be readily transmitted directly or indirectly from one individual to another and has been to create a risk of death or significant injury or impairment; this definition shall not, however, be construed to include human immunodeficiency viruses or tuberculosis, unless used as a bioterrorism weapon. “Individual” shall include any companion animal. Further, whenever “person or persons” is used herein it shall be deemed, when the context requires it, to include any individual ”

Quarantine

- ❖ New Definition of Quarantine
- ❖ “Means the physical separation, including confinement or restriction of movement, of an individual or individuals who are present within an affected area, as defined herein, or who are known to have been exposed or may reasonably be suspected to have been exposed to a communicable disease of public health threat and who do not yet show signs or symptoms of infection with the communicable disease of public health threat in order to prevent or limit the transmission of the communicable disease of public health threat to other unexposed and uninfected individuals.”


Preconditions to Imposition of Quarantine or Isolation

1. Any quarantine or isolation is implemented in the least restrictive environment necessary to contain the communicable disease of public health threat;
2. Any quarantined persons shall be confined separately from any isolated persons, to the maximum extent practicable;
3. Upon determining that any quarantined person can be reasonably believed to have become infected with a communicable disease of public health threat, the infected person shall be promptly removed from quarantine and placed in isolation;

Preconditions to Imposition of Quarantine or Isolation

4. The health and disease status of any quarantined and isolated persons shall be monitored regularly to determine if such persons require continued quarantine or isolation;
5. Any quarantined or isolated persons shall be immediately released from quarantine or isolation upon a determination by the State Health Commissioner that such quarantined or isolated persons pose no risk of transmitting the communicable disease of public health threat to other persons; and
6. The site of any quarantine or isolation shall be, to the extent practicable, safely and hygienically maintained with adequate food, clothing, health care, and other essential needs made available to the persons who are subject to any order of quarantine and isolation;

Quarantine

- ❖ Explicit authority to quarantine groups of individuals who may be exposed
 - ❖ Explicit authority to quarantine geographic areas which may be exposed
 - ❖ “Affected Area” – Requires Governor’s approval and declaration of State of Emergency for that area
 - ❖ Eliminate disputes about authority in midst of a public health emergency
- 


Quarantine

❖ Order of Quarantine

- Ex parte-prepared by the Commissioner
- Sets forth:
 - Nature of the Public Health Threat including the specific disease if practical
 - Reasons why quarantine is required – Voluntary Compliance has failed or would be ineffective
 - Sufficient information to provide notice
 - Means by which the quarantine to be implemented
 - Geographic parameters (if any)
 - Duration of quarantine
 - Penalty for non-compliance
- Provided to those covered individually if possible, otherwise by a means determined by the Commissioner



Isolation

- ❖ Current isolation statutes intended to address individual infected persons with non-rapidly spreading disease, e.g. TB or HIV
 - ❖ Very “due process heavy”
 - ❖ Creates a parallel provision to existing isolation statutes if the Commissioner determines that the current statutes are insufficient to control a Public Health Threat
- 

Isolation

❖ Order of Isolation

➤ Ex parte-issued by the Commissioner

➤ Sets forth:

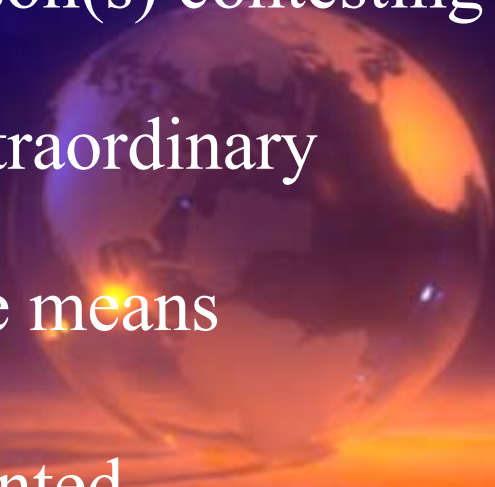
- Identity of isolated persons
- Bases for the isolation
- Specific communicable disease
- Site of the isolation
- Date and time when isolation commences
- Any conditions of the isolation



Isolation & Quarantine

- ❖ Petition to extend the ex parte Order must be filed with a Circuit Court as soon as practicable
 - Venue – where persons reside or are located
 - If an affected area venue is a jurisdiction within that area
 - Could be anywhere within Virginia
- ❖ Information contained in Order + summary of findings on which Commissioner relied in issuing Order-may file under seal
- ❖ Court must find probable cause that quarantine or isolation is the least restrictive means available to control the Public Health Threat
- ❖ Deference to specialized competence of the Commissioner

Isolation & Quarantine

- ❖ Persons covered by Order may contest in the Circuit Court which issued the Order – Does not stay the Order
 - ❖ Written Motion to Contest sets forth reasons – Burden of proof rests with the person(s) contesting the Order
 - ❖ Hearing within 48 hours unless extraordinary circumstances
 - ❖ Standard of review-least restrictive means
 - ❖ Mechanism for consolidation
 - ❖ Right to counsel, retained or appointed
- 

Isolation & Quarantine

- ❖ Civil Liberty Protections
- ❖ Notice of bases for finding need for quarantine
- ❖ Circuit Court review of ex parte orders
- ❖ Standard of Proof-Least Restrictive Means
- ❖ Right to Counsel
- ❖ Judicial Review by Virginia Supreme Court




Isolation & Quarantine

- ❖ Provide for personal needs of persons isolated and quarantined
 - Food, medications, medical equipment
- ❖ May be a significant challenge if significant numbers of persons involved
- ❖ “Shelter in place”



Isolation & Quarantine Enforcement

- ❖ Emergency Order for detention
 - ❖ Refusal to comply
 - ❖ Least restrictive setting
 - ❖ Class 1 Misdemeanor
 - Confinement for up to 12 months
 - Fine of up to \$2,500
 - ❖ Enforced by Commonwealth Attorneys
 - ❖ Injunction and money penalties (32.1-27)
- 

Isolation & Quarantine

- ❖ Unresolved issues
- ❖ Compensation for lost wages of persons isolated and quarantined
- ❖ Compensation for lost business
- ❖ Jurisdiction over federal properties
- ❖ Multi-jurisdictional areas, e.g. Northern Virginia

